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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/505,440  
Applicant : AMMERMANN et al  
Filed : August 24, 2004  
TC/A.U. : 1616  
Examiner :

Docket No. : 3165-107  
Customer No. : 6449  
Confirmation No. : 2309

**SUBMISSION OF INTERNATIONAL PRELIMINARY EXAMINATION REPORT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Submitted herewith is a copy of the translation of the International Preliminary Examination Report.

In the event that any fees are due with this paper, please charge our Deposit Account No. 02-2135.

Respectfully submitted,

By

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RBM/cb

## PATENT COOPERATION TREATY

PCT/EP2003/00192

20. Dez. 2004 From the INTERNATIONAL BUREAU

PCT

NOTIFICATION OF TRANSMITTAL  
OF COPIES OF TRANSLATION  
OF THE INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT

(PCT Rule 72.2)

BASF AKTIENGESELLSCHAFT  
67056 Ludwigshafen  
ALLEMAGNE

EL: Phase beendet 18.08.04.

Date of mailing (day/month/year)

16 December 2004 (16.12.2004)

Applicant's or agent's file reference  
0000053296

## IMPORTANT NOTIFICATION

International application No.  
PCT/EP2003/00192\*International filing date (day/month/year)  
26 February 2003 (26.02.2003) \*

Applicant

BASF AKTIENGESELLSCHAFT et al

## 1. Transmittal of the translation to the applicant.

The International Bureau transmits herewith a copy of the English translation made by the International Bureau of the international preliminary examination report established by the International Preliminary Examining Authority.

## 2. Transmittal of the copy of the translation to the elected Offices.

The International Bureau notifies the applicant that copies of that translation have been transmitted to the following elected Offices requiring such translation:

AZ, CA, CH, CN, CO, GH, KG, KP, KR, MK, MZ, RU, TM

The following elected Offices, having waived the requirement for such a transmittal at this time, will receive copies of that translation from the International Bureau only upon their request:

AE, AG, AL, AM, AP, AT, AU, BA, BB, BG, BR, BY, BZ, CR, CU, CZ, DE, DK, DM, DZ, EA, EC, EE, EP, ES, FI, GB, GD, GE, GM, HR, HU, ID, IL, IN, IS, JP, KE, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MN, MW, MX, NO, NZ, OA, OM, PH, PL, PT, RO, SC, SD, SE, SG, SK, SL, TJ, TN, TR, TT, TZ, UA, UG, US, UZ, VC, VN, YU, ZA, ZM, ZW

## 3. Reminder regarding translation into (one of) the official language(s) of the elected Office(s).

The applicant is reminded that, where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report.

It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned (Rule 74.1). See Volume II of the PCT Applicant's Guide for further details.

The International Bureau of WIPO  
34, chemin des Colombettes  
1211 Geneva 20, Switzerland

Authorized officer

Ellen Moyse

Facsimile No.+41 22 740 14 35

Facsimile No.+41 22 338 89 75

WFR V

Translation

PATENT COOPERATION TREATY

PCT/EP2003/001929



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

|  |   |  |
|--|---|--|
| Applicant's or agent's file reference<br>0000053296  | <b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416) |  |
| International application No.<br>PCT/EP2003/001929   | International filing date (day/month/year)<br>26 February 2003 (26.02.2003)   | Priority date (day/month/year)<br>01 March 2002 (01.03.2002) |
| International Patent Classification (IPC) or national classification and IPC<br>A01N 47/24 |   |  |
| Applicant<br>BASF AKTIENGESELLSCHAFT   |   |  |

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of \_\_\_\_\_ sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☒ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

|  |   |
|--|---|
| Date of submission of the demand<br>04 September 2003 (04.09.2003) | Date of completion of this report<br>29 October 2003 (29.10.2003) |
| Name and mailing address of the IPEA/EP                            | Authorized officer  |
| Facsimile No.  | Telephone No.   |

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP2003/001929

## I. Basis of the report

## 1. With regard to the elements of the international application:\*

- ☐ the international application as originally filed
- ☒ the description:  
pages \_\_\_\_\_ 1-17 \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☒ the claims:  
pages \_\_\_\_\_ 1-11 \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, as amended (together with any statement under Article 19  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☐ the drawings:  
pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_
- ☐ the sequence listing part of the description:  
pages \_\_\_\_\_, as originally filed  
pages \_\_\_\_\_, filed with the demand  
pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_

## 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

## 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/fig \_\_\_\_\_

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP 03/01929

## I. Basis of the report

1. This report has been drawn on the basis of *(Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.)*:

1. This report maintains the sequence of documents (D) used in the international search report.

2. The International Searching Authority was of the opinion that the international application comprises 5 inventions and has carried out a partial search for the parts of the international application that refer to the first invention mentioned in claims 1, 2, 7-11. The applicant has not paid the required additional search fees in time.

The present report therefore refers only to the subject matter of the invention that is mentioned first, that is claims 1, 2 and 7-11.

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IV. Lack of unity of invention

1. In response to the invitation to restrict or pay additional fees the applicant has:

- ☐ restricted the claims.
- ☐ paid additional fees.
- ☐ paid additional fees under protest.
- ☒ neither restricted nor paid additional fees.

2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.

3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is

- ☐ complied with.
- ☒ not complied with for the following reasons:

See the Supplemental Sheet.

4. Consequently, the following parts of the international application were the subject of international preliminary examination in establishing this report:

- ☐ all parts.
- ☒ the parts relating to claims Nos. 1, 2, 7-11

**INTERNATIONAL PRELIMINARY EXAMINATION REPORT**

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**Supplemental Box**

(To be used when the space in any of the preceding boxes is not sufficient)

Continuation of: IV.3

The application lacks unity of invention (PCT Rule 13.1)  
(see the reasons given in the *Invitation to Pay*  
*Additional Fees*).

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.  
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## V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

### 1. Statement

|                               |        |            |     |
|-------------------------------|--------|------------|-----|
| Novelty (N)                   | Claims | 1, 2, 7-11 | YES |
|                               | Claims |            | NO  |
| Inventive step (IS)           | Claims | 1, 2, 7-11 | YES |
|                               | Claims |            | NO  |
| Industrial applicability (IA) | Claims | 1, 2, 7-11 | YES |
|                               | Claims |            | NO  |

### 2. Citations and explanations

#### 1. Novelty (PCT Article 33(2))

D1 describes synergistic fungicidal agent combinations containing prothioconazoles and a further fungicide such as, for example, cresoxim-methyl or azoxystrobin (see page 6, formulas XII and XIII; page 10, final paragraph - page 11, first paragraph; page 32, table 1; pages 44-45, table 5).

Racemates and (-)-enantiomers of prothioconazoles are known from D2 and D3. Both documents suggest mixtures of this agent with a further biocide.

D4 describes the synthesis and the fungicidal property of trifloxystrobin.

None of the search report citations discloses a fungicidal mixture that contains prothioconazoles and trifloxystrobin.

The subject matter of claims 1, 2 and 7-11 is therefore novel (PCT Article 33(2)).

#### 2. Inventive step (PCT Article 33(3))

A synergistic fungicidal mixture consisting of prothioconazoles and trifloxystrobin is not obvious



**INTERNATIONAL PRELIMINARY EXAMINATION REPORT**

International application No.

PCT/EP 03/01929

from the prior art. Claims 1, 2 and 7-11 therefore involve an inventive step.

**3. Industrial applicability (PCT Article 33(4))**

The present application is industrially applicable.